(29,558)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 299

CHUNG FOOK, PETITIONER,

vs.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX.

	Page
Record from U. S. district court for the northern district of California..	1
Præcipe for transcript of record.....	1
Petition for writ of habeas corpus.....	2
Order to show cause.....	6
Demurrer to petition for writ of habeas corpus.....	7
Minute order sustaining demurrer and denying petition for writ of habeas corpus and filing of immigration records.....	9
Notice of appeal.....	9
Petition for appeal.....	10
Assignment of errors.....	11
Order allowing appeal.....	13
Stipulation and order re withdrawal of immigration record.....	14
Clerk's certificate.....	16
Citation and service.....	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 23, 1924

Page

Caption in C. C. A. 19
Order of submission 21
Order filing opinion, etc 22
Opinion, Gilbert, J 23
Decree 26
Clerk's certificate 27
Respondent's Exhibit A—Immigration file No. 21063 29
Testimony of Lee Shee 30
Medical certificate 31
Appearance for alien 32
Affidavit of Jeong Pork On 32
Affidavit of Chung Fook 33
Clerk's certificate to Exhibit A 34
Writ of certiorari and return 34

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Praecipe for Transcript of Record.

To the Clerk of said Court:

Sir: Please make copies of the following papers to be used in preparing transcript on appeal:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.
3. Demurrer to Petition.
4. Minute Order Regarding Immigration Record.
5. Judgment and Order Dismissing Order to Show Cause and Denying Petition for Writ.
6. Notice of Appeal.
7. Petition for Appeal.
8. Assignment of Errors.
9. Order Allowing Appeal.
10. Stipulation and Order Regarding Immigration Record.
11. Clerk's Certificate.
12. Citation on Appeal—Original and Copy.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Aug. 26, 1922. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, #21063/4–8 ex SS. "Taiyo Maru," May 3, 1922, on Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable United States District Judge, Now Presiding in the Above-entitled Court:

It is respectfully shown by the petition of Chung Fook that Lee Shee, who is hereinafter in this petition referred to as the "detained," is unlawfully imprisoned, detained, confined and restrained of her liberty by Edward White, Commissioner of Immigration for the port of San Francisco, at the Immigration Station at Angel Island, County of Marin, within the Southern Division of the United States District Court in and for the Northern District of California; and that said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that detained as an alien Chinese person is subject to and entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6, 1882, July 5, 1884, November 3, 1893, and April 29, 1902, as amended and added to by Section 5 of the Deficiency Act of April 7,

1904, which said Acts are commonly known and referred to as the Chinese Exclusion Laws, but not under the terms of the Act of Congress of February 5, 1917, commonly known as the General Immigration Law; and that he, the said [2] Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China, all as hereinafter more specifically set forth.

But, on the contrary, your petitioner alleges that the said detained arrived at the port of San Francisco on the SS. "Taiyo Maru" on May 3, 1922, and thereupon made application to enter the United States as the wife of Chung Fook, your petioner, a native born citizen of the United States, but the detained was refused and denied a landing upon the ground that she was afflicted with a dangerous contagious disease known as clonorchiasis, said finding being based upon the certificate of the medical examiner of aliens, and from said exclusion no appeal is permitted to be taken.

Application was made upon behalf of the detained for admission into the United States, notwithstanding said certification, said application being based upon Section 22 of the said General Immigration Law, the contention being advanced that the alien wife of a citizen of the United States was, under said Section 22, entitled to absolute admission notwithstanding said certification of being afflicted with a dangerous contagious disease. And your petitioner alleges that notwithstanding the fact that the Secretary of Labor has accepted such

interpretation of the law as was herein contended for by the detained in numerous prior instances, wherein the alien wives of native born citizens who were afflicted with the dangerous and contagious disease clonorchiasis were admitted into the United States, namely: Pong Shee, 18737/6–1, "China," December 17, 1919; Leong Shee, 19722/7–3 "Tenyo Maru," November 24, 1920; Foong Shee, 19768/14–1 ex SS. "Nile" December 12, 1920; and Mok Shee, 20148/3–6 ex SS. "Siberia Maru," April 18, 1921, the present detained was refused admission notwithstanding the fact that she is the lawful wife of a native born citizen of the United States. [3]

Your petitioner further alleges that it is cruel, inhuman, unjust, against the reason and spirit of the law, and contrary to American institutions, to deport the detained away from and out of the United States and refuse her admission thereto, when her husband, a native born citizen of the United States, is a lawful resident and domiciled within the United States, and that it is cruel, unjust, against the reason and spirit of the law to separate the said detained from her husband, and deprive the said husband of his wife.

That your petitioner has not in his possession nor under his control a copy of the hearings or proceedings hereinbefore mentioned. Your petitioner alleges, however, that he has set forth herein the basic facts upon which this prayer for relief is made, but, however, should the respondent desire to produce the immigration records appertain-

ing to the case of the said detained, your petitioner stipulates that upon their production the said records may be considered with the same force and effect as if filed with this petition and as exhibits in support and in explanation thereof.

Your petitioner further alleges that it is the intention of the said Commissioner to deport the said detained out of and away from the United States by the SS. "Taiyo Maru," due to sail from the port of San Francisco on May 11th, 1922, at 12 o'clock noon, and unless this Court interferes the said detained will be deprived of her right of entry and residence within the United States.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner of Immigration, commanding him to produce the body of the said detained, together with the time and cause of her detention, before your Honor at a time and place to be therein specified, to the end that the cause of the detention of the said detained [4] may be inquired into, and that she be relieved of restraint, and that she may be discharged from custody and go hence without day.

Dated: San Francisco, California, May 11th, 1922.

JOSEPH P. FALLON,
Attorney for Petitioner. [5]

State of California,
City and County of San Francisco,—ss.

Chung Fook, being duly sworn, deposes and says: That he is the petitioner named in the foregoing

petition; that he has heard read said petition and knows the contents therof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

CHUNG FOOK.

Subscribed and sworn to before me this 11th day of May, 1922.

[Seal] WM. E. SCHORD,

Notary Public in and for the City and County of Francisco, State of California.

[Endorsed]: Filed May 11, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [6]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, #21063/4–8, "Taiyo Maru," May 3, 1922, on Habeas Corpus.

Order to Show Cause.

Good cause appearing therefor, and upon reading the verified petition on file herein,—

IT IS HEREBY ORDERED that Edward White, Commissioner of Immigration for the port of San Francisco, appear before this Court on the 13th day of May, 1922, at the hour of 10 o'clock A. M. of said day, to show cause, if any he have, why a writ of habeas corpus should not be issued as herein

prayed for, and that a copy of this order be served upon the said Commissioner; and

IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of the said Commissioner of the Secretary of Labor, shall have the custody of the said Lee Shee, are hereby ordered and directed to retain the said Lee Shee within the custody of the said Commissioner of Immigration, and within the jurisdiction of this court until its further order herein.

Dated, San Francisco, California, May 11th, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed May 11, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [7]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now the respondent, Edward White, Commissioner of Immigration, at the port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief theron.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,
United States Attorney,
BEN F. GEIS,
Assistant United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed May 20, 1922. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [8]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the city and county of San Francisco, on Saturday, the 20th day of May, in the year of our Lord, one thousand nine hundred and twenty-two. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

(Minute Order Sustaining Demurrer and Denying Petition for Writ of Habeas Corpus and Filing of Immigration Records.)

This matter came on regularly this day for hearing on Order to Show Cause as to the issuance of a Writ of Habeas Corpus herein. J. P. Fallon, Esq., was present as attorney for petitioner and detained. P. A. Robbins, Esq., was present as attorney for and on behalf of Respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as Respondent's Exhibit "A" and that the same be considered as part of original petition. After hearing respective attorneys, the Court ordered said Demurrer sustained and petition for writ herein denied. On motion of Mr. Fallon, further ordered execution stayed ten (10) days to permit the perfecting of an appeal herein. [9]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Notice of Appeal.

To the Clerk of Said Court, and to the Honorable JOHN T. WILLIAMS, United States Attor-

neys in and for the Southern Division of the United States District Court, for the Northern District of California, First Division.

You, and each of you, will please take notice that Chung Fook, the petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the order and judgment rendered, made and entered herein May 20th, 1922, denying the petition for a writ of habeas corpus filed herein.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [10]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Petition for Appeal.

Comes now Chung Fook, the petitioner in the above-entitled matter, and respectfully shows:

That on the 20th day of May, 1922, a judgment and order was made by the above-entitled court and entered herein denying a writ of habeas corpus in the above-entitled matter and dismissing the petition of said petitioner for a writ of habeas corpus in which said judgment and order certain

errors were committed to the prejudice of the above-named Lee Shee, which more fully appear by his assignment of errors filed herewith.

WHEREFORE, your petitioner prays that an appeal may be allowed to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that the Clerk of the above-entitled court be directed to make and prepare a transcript of all the papers, proceedings and record of the above-entitled matter and to transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law, and for an order that the execution of the warrant of deportation of said Lee Shee be stayed pending this appeal.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [11]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Assignment of Errors.

Now comes the petitioner, Chung Fook, through his attorney, Joseph P. Fallon, Esq., and sets forth the errors he claims the above-entitled court com-

mitted in denying his petition for a writ of habeas corpus, as follows:

I.

That said Court erred in not granting said petition for a writ of habeas corpus.

II.

That said Court erred in denying said petition for a writ of habeas corpus.

III.

That said Court erred in holding that the petition did not show or tend to show that said Lee Shee did not obtain or was accorded a full and fair hearing by said Immigration officials or by said Secretary of Labor.

IV.

That said Court erred in not holding that the detained, as the alien wife of a citizen of the United States, was entitled to enter therein, even though alleged to be afflicted with a contagious disease.

V.

That the said Court erred in not holding that under [12] Section 22 of the General Immigration Law, Act of February 5, 1917, the detained, as the wife of a citizen of the United States, was entitled to enter therein, even though afflicted with a contagious disease.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [13]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Order Allowing Appeal.

It appearing to the above-entitled court that Chung Fook, the petitioner herein, has this day filed and presented to the above Court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled court make and prepare a transcript of all the papers, proceedings and record in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals, for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Lee Shee be and the same is hereby stayed pending this appeal and that the said Lee Shee be not removed

from the jurisdiction of this Court pending this appeal.

Dated: May 27th, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,536.

In the Matter of LEE SHEE, on Habeas Corpus.

Stipulation and Order Respecting Withdrawal of Immigration Record.

It is hereby stipulated and agreed by and between the attorney for the petitioner and appellant herein and the attorney for the respondent and appellee herein, that the original immigration record in evidence and considered as part and parcel of the petition for a writ of habeas corpus upon hearing of the demurrer in the above-entitled matter, may be withdrawn from the files of the Clerk of the above-entitled court and filed with the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit, there to be considered as a part and parcel of the record on appeal in the above-entitled case with the same force and

effect as if embodied in the transcript of the record, and so certified to by the Clerk of the court.

Dated: San Francisco, Cal., May 27th, 1922.

JOHN T. WILLIAMS,
Attorney for Respondent and Appellee.

_____,
Attorney for Petitioner and Appellant.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration record therein referred to may be withdrawn from the office of the Clerk of this Court and filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by this Court.

Dated: San Francisco, Cal., May 27th, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 15 pages, numbered from 1 to 15, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Lee Shee, on Habeas Corpus, No. 17,536, as the same now remain on file and of record in this office; said transcript having been prepared on appeal (copy of which is included in this transcript) and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is in the sum of Five Dollars and Sixty Cents ($5.60), and that the same has been paid to me by the attorney for the appellant herein.

I further certify that attached is the original citation on appeal (page 16).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of September, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk.

By T. L. Baldwin,
Deputy Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and JOHN T. WILLIAMS, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Chung Fook is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. H. HUNT, United States District Judge for the Southern Division of the Northern District of California, this 26th day of August, A. D. 1922.

WM. H. HUNT,
United States Judge.

Receipt of copy of within is hereby acknowledged this 26th day of August, 1922.

JOHN T. WILLIAMS,
Atty. for Appellee.

[Endorsed]: No. 17,536. United States District Court for the Northern District of California. Chung Fook, Appellant, vs. Edward White, Appellee. Citation on Appeal. Filed Aug. 26, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [16]

[Endorsed]: No. 3922. United States Circuit Court of Appeals for the Ninth Circuit. Chung Fook, Appellant, vs. Edward White, as Commissioner of Immigration, for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed September 2, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed September 12, 1922. F. D. Monckton, Clerk.

No. 3922

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the second day of October, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM W. MORROW, Circuit Judge.

No. 3922.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. George A. McGowan, counsel for the appellant, and by Mr. P. A. Robbins, on behalf of counsel for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable FRANK S. DIETRICH, District Judge.

No. 3922.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Order Directing Filing of Opinion and Filing and Recording of Decree.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William W. Morrow, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk and that a decree be filed and recorded in the minutes of this Court, in accordance with said opinion.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3922.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Opinion U. S. Circuit Court of Appeals.

Before GILBERT, ROSS and MORROW, Circuit Judges.

GILBERT, Circuit Judge:

Lee Shee, a Chinese woman, made application to be admitted to the United States as the wife of Chung Fook, a native-born citizen of the United States. She was denied a landing by a Board of Special Inquiry on the ground that she was an alien afflicted with a dangerous contagious disease known as clonorchiasis, the finding being based on the certificate of the medical examiner of aliens.

Chung Fook appeals from an order of the Court below denying his petition for a writ of *habeas corpus* on the behalf of Lee Shee. It is contended that it is cruel, inhuman and unjust and contrary to the reason and spirit of the law and American institutions to refuse admission of the wife of the appellant, a native-born citizen of the United

States lawfully resident and domiciled therein and that to exclude her is to violate Section 22 of the Immigration Act of February 5, 1917. It is not disputed that Lee Shee being incapable of naturalization remained an alien notwithstanding her marriage to a citizen of the United States, but it is claimed that an absolute exemption from detention for treatment and exclusion from the United States is implied in the proviso appended to Section 22. That section provides that in the case of an attempted entry into this country of a diseased wife of a naturalized alien or permanent resident alien, the wife shall be held until "it shall be determined whether the disorder will be easily cured" or whether she could be permitted to land without danger to other persons. The provision for the detention of such diseased persons for treatment in hospital until cured, continues with this proviso: "Provided that if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband's or father's naturalization shall be admitted without detention for treatment in hospital." The proviso relates only to the wives of naturalized citizens and does not by its terms include the case of the alien wife of a native-born citizen. But it is contended that inasmuch as the proviso gives an absolute right of admission to the wife of a naturalized citizen where the naturalization has preceded the marriage, it follows that under a proper construction of the statute the wife of a native-born citizen is entitled to the same

right, and that to hold otherwise is to give the naturalized citizen greater privileges and immunities than those which are enjoyed by native-born citizens.

We think that the exemption from detention expressed in the proviso was intended to relate only to the wife who by marriage has acquired her husband's citizenship and thus has become a citizen of the United States, and that it does not apply to a wife who notwithstanding her marriage to a citizen still remains an alien as provided by Section 1994, Rev. Stats. Section 22 of the act of February 5, 1917, prescribes a different treatment for each of these classes. The wife who remains an alien because she was married before her husband's naturalization is to be detained and given treatment in hospital, but the wife married subsequently to her husband's naturalization, if she herself was entitled to naturalization, is to be admitted without detention for treatment in hospital, and this obviously for the reason that by her marriage she has become a citizen of the United States and entitled to admission regardless of her physical condition.

Such being our view of the statute, we affirm the judgment of the court below.

[Endorsed]: Opinion. Filed March 12, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3922.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Decree. Filed and Entered March 12, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3922.

CHUNG FOOK,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing twenty-six (26) pages, numbered from and including 1 to and including 26, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding original exhibit, made pursuant to request of counsel for the appellant, and certified under section 3 of rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of March, A. D. 1923.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

RESPONDENT'S EXHIBIT A—Filed September 2, 1922

U. S. Department of Labor, Immigration Service

Spl. 98.
Immigation File. No. 21063/4-8.
Subject: Lee Shee, wife of citizen, St. Louis, Mo.
hus. 4-1.

Fallon.

Spl. 12.

U. S. Department of Labor, Immigration Service

Action Sheet, Arrival

(Space for Filing)

Photos requested.

Arrival

No. 21063/4-8.
Name: Lee Shee.
Accompanied by hus. 4-1.
Class: Wife son native.
Destination: St. Louis, Mo.
Vessel: Taiyo M.
Date: May 3, 1922.
Remarks: ——.
5/6/22. Excl. B. S. I. (Med. Cert.) J. X. Strand, Chr.
(Date:) —— —, ——. Reported —— —, ——. —— ——, Inspector.
(Date:) —— —, ——. Forwarded to Law Section. —— ——, Inspector in Charge.
(Date:) —— —, ——. Action ——. —— ——, For Law Section.
(Date:) —— —, ——. Action ——. —— ——, Commissioner.
(Date:) —— —, ——. Appealed by —— ——.
(Date:) —— —, ——. Action ——. —— ——, For Deportation and Detention Division.
(Date:) —— —, ——. Issued Certificate of Identity No. 30.

Spl. 342.

U. S. Department of Labor, Immigration Service, San Francisco, Cal.

May 6th, 1922.

A Meeting of a Board of Special Inquiry, Angel Island Station, Composed of Inspector J. X. Strand, Chairman; Inspector Oberg, Acting; Inspector Hays; Stenographer, Leona Oberg; Interpreter, Ben Yim

No. 21063/4-8

In the Matter of the Application of LEE SHEE, EX SS. "Taiyo Maru," 5-3-22, for Admission to the United States

Medical certificate: Clonorchiasis & Uncinariasis.
Held for special inquiry by Inspector Howell as one afflicted with a dangerous, contagious disease.

Alien sworn.

States her name is Lee Shee; aged 21; female; married; occupation housewife, cannot read or write; Chinese race and nationality; last permenant residence Sin Wong Village, Hok Son District, China—nearest relative in China is father, Lee Sing living in the Sew Hoo Village, S. W. D. China; destined to St. Louis, Mo., to join husband Jung Port On; never in the U. S. before; husband paid passage; no money; no ticket to destination; born in the Sew Hoo Village where my father is living.

Q. Under what provision of the Chinese Exclusion Act are you applying for admission?

A. Wife of a citizen.

Q. Where did you board the "Taiyo Maru"?

A. Hong Kong, arriving here on the 3d.

Q. Who accompanied you, if anyone, on that journey?

A. My husband.

Q. Had you been examined prior to embarkation for the existence of any dangerous, contagious disease?

A. Yes.

Q. What was the nature and result of that examination?

A. My eyes and the interior part of my body—for Hookworm.

Q. Were you examined for clonorchiasis also?

A. I don't know.

Q. Did you receive any certificate from the medical authorities covering that examination?

A. Yes.

(Produces medical certificate issued by the Surgeon of the "Taiyo Maru" covering voyage #5, sailing from Hong Kong April 4th, 1922, file #21540, in the name of Lee Shee and certifies that she was examined by said surgeon for all dangerous and loathsome contagious diseases, excepting hook, including trachoma, beri-beri,

tuberculosis, and found free from those for which examined. This certificate also shows she was examined by a practising physician in Hong Kong for Hook and Clonorchiasis and found free from said diseases. Certificate is returned to applicant.)

Q. Did you ever undergo treatment for any diseases of any kind while in Hong Kong, prior to embarkation?
A. No.

The Medical Examiners of aliens at this Station have certified you as being afflicted with Clonorchiasis, a dangerous, contagious, disease and also Hookworm, the last mentioned affliction in their opinion affecting your ability to earn a living. However in view of the first mentioned affliction being manditorily excludable, the Board is unanimous in excluding you on that account and from this decision you have no appeal.

If deported it will be at the expense of the steamship company, which must of necessity return you in quarters equal to those occupied by you when coming over.

True transcript of my notes.
5-12th, 1922.

Leona Oberg, Recorder.

Form 541

Fallon.

U. S. Department of Labor, Immigration Service

MEDICAL CERTIFICATE

Port of San Francisco, Calif.,
Date 5/5/22.

Name: Lee Shee, 21063/4-8. Age: 21. Sex: Female.
Native of China. Race: Chinese. Date arrival: 5/3/22.
SS.: Taiyo Maru. Class: —. Manifest No. —.
This is to certify that the above-described person has this day been examined and is found to be afflicted with clonorchiasis, Class A (II)

This condition is regarded by the United States Public Health Service as a dangerous contagious disease.

and

Uncinariasis: Infection of the intestinal tract with hookworm.

This condition in our opinion will affect ability to earn a living.
D. Moore, Surgeon; J. P. Hickey, A. A. Surgeon, U. S. Public Health Service. DM/JPH.

Form 2508

San Francisco, Calif., May 4th, 1922.

Commissioner of Immigration, San Francisco, California.

SIR: I hereby file notice of appearance in the case of Lee Shee, No. 4-8, ex SS., Taiyo Maru, May 3d, 1922, who has applied for admission at this port as a wife of citizen.

I certify that I am not associated in any way whatever, either directly or indirectly, with any attorney or other person who has been refused permission to practice before your office.

Respectfully, Joseph P. Fallon, Attorney for Applicant. Address: 1019 Hearst Bldg., San Francisco. Telephone No. Sutter 1353.

(NOTE.—This form should not be filed in duplicate; one original is sufficient.)

[Stamped:] U. S. Immigration Service, Chinese Division, S. F., Cal., May 4, 1922, 9 o'clock, A. M.

(Here follow photos attached to side folio pages 34, 35, and 36.)

U. S. Department of Labor, Immigration Service

In re LEE SHEE. 4-8, SS. Taiyo Maru. May 3, 1922. Wife of Citizen.

AFFIDAVIT OF JEONG PORK ON

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Jeong Pork On, being duly sworn, deposes and says:

That he is a citizen of the United States; that affiant paid a visit to China and returned therefrom May 3, 1922, ex SS. Taiyo Maru, #4-9;

That affiant is well acquainted with the family of Chung Fook and knows of his own knowledge that the above named applicant for admission, Lee Shee, is the lawful wife of said Chung Fook, and affiant makes this affidavit to facilitate her landing at the port of San Francisco.

JEONG PARK ON.

Subscribed and sworn to before me this 4th day of May, 1922. Wm. E. Schord, Notary Public in and for the City and County of San Francisco, State of California. (Seal of W. E. Schord, Notary Public, City & County, San Francisco, Cal.)

Photograph attached to page 34
of original copy.

Photographs attached to page 35
of original copy.

Photographs attached to page 36
of original copy.

In the Matter of LEE SHEE, Wife of Citizen

Application for Admission to the United States

4-8, Taiyo Maru, May 3, 1922

AFFIDAVIT OF HUSBAND, CHUNG FOOK

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Chung Fook, being duly sworn, deposes and says:

That affiant is a citizen of the United States, his status as such having been established before the United States Immigration Service on August 27, 1921, as appears from record No. 12017/17744 on file in the office of the Commissioner of Immigration, Angel Island, California;

That it is now affiant's intention to proceed to China for the purpose of marrying Lee Shee and bringing her with him to the United States on his return thereto;

That affiant attaches his photograph hereto, and will have a photograph of said Lee Shee attached hereto in China, for the purpose of identification, and prepares this statement of facts to aid the said Lee Shee in her application for admission to the United States, as the wife of a citizen of the United States.

Chung Fook.

Subscribed and sworn to before me this 28th day of September, 1921. Thomas S. Burnes, Notary Public. (Seal of Thomas S. Burnes, Notary Public, City and County of San Francisco.)

REFERENCE

1918

Number	Name	Steamer	Date	Relation	Inspector's name	Checked by
.....	....	.....	....	.....	.....	.....
.....	....	.....	....	.....	.....	.....
.....	....	.....	....	.....	.....	.....

[Endorsed:] 17536. Southern Division, U. S. District Court, Northern District of California, First Division. In the Matter of Lee Shee. On Habeas Corpus. Respondent's Exhibit "A." Filed May 20, 1922. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk. United States Circuit Court of Appeals for the Ninth Circuit. No. 3922. Filed Sep. 2, 1922. F. D. Monckton, Clerk.

CLERK'S CERTIFICATE

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the attached exhibit, known as and marked:

Respondent's Exhibit "A" (Immigration Records)

is the original exhibit filed in the Matter of Lee Shee, on Habeas Corpus, No. 17536, and is transmitted herewith in accordance with a stipulation and order of Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of September, A. D. 1922.

Walter B. Maling, Clerk, by T. L. Baldwin, Deputy Clerk.

(Seal of the U. S. District Court, Northern Dist. of California.)

[File endorsement omitted.]

UNITED STATES OF AMERICA, ss:

(Seal of the Supreme Court of the United States.)

WRIT OF CERTIORARI AND RETURN—Filed January 4, 1924

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Chung Fook is appellant, and Edward White, as Commissioner of Immigration for the Port of San Francisco, is appellee, No. 3922, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

STIPULATION AS TO RETURN TO WRIT OF CERTIORARI—Filed December 29, 1923

It is hereby stipulated and agreed by and between the attorneys of record for the respective parties in the above entitled cause, that the transcript of record now on file in the Supreme Court of the United States in the case of Chung Fook, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee, No. 1008, October Term, 1922, of said Supreme Court, shall stand as the return of the judges of the United States Circuit Court of Appeals for the Ninth Circuit, to the Writ of Certiorari issued out of said Supreme Court on the 23d day of June, 1923.

Dated: July 12th, 1923.

Joseph P. Fallon, George A. McGowan, Attorneys for Appellant. John T. Williams, Alma M. Myers, Attorneys for Appellee.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS TO STIPULATION AS TO RETURN TO WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari", filed in the above entitled cause on the 29th day of December, A. D. 1923, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of December, A. D. 1923.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk. (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

RETURN TO WRIT OF CERTIORARI

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation as to Return to Writ of Certiorari," and Respondent's Exhibit "A", in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the appellant in said cause in the said Supreme Court as a part of its petition for a writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 29th day of December, A. D. 1923.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of December, A. D. 1923.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.
(Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

[File endorsement omitted.]

APR 17 1923
WM. R. STANSBURY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No. [redacted]299

CHUNG FOOK,
Petitioner,

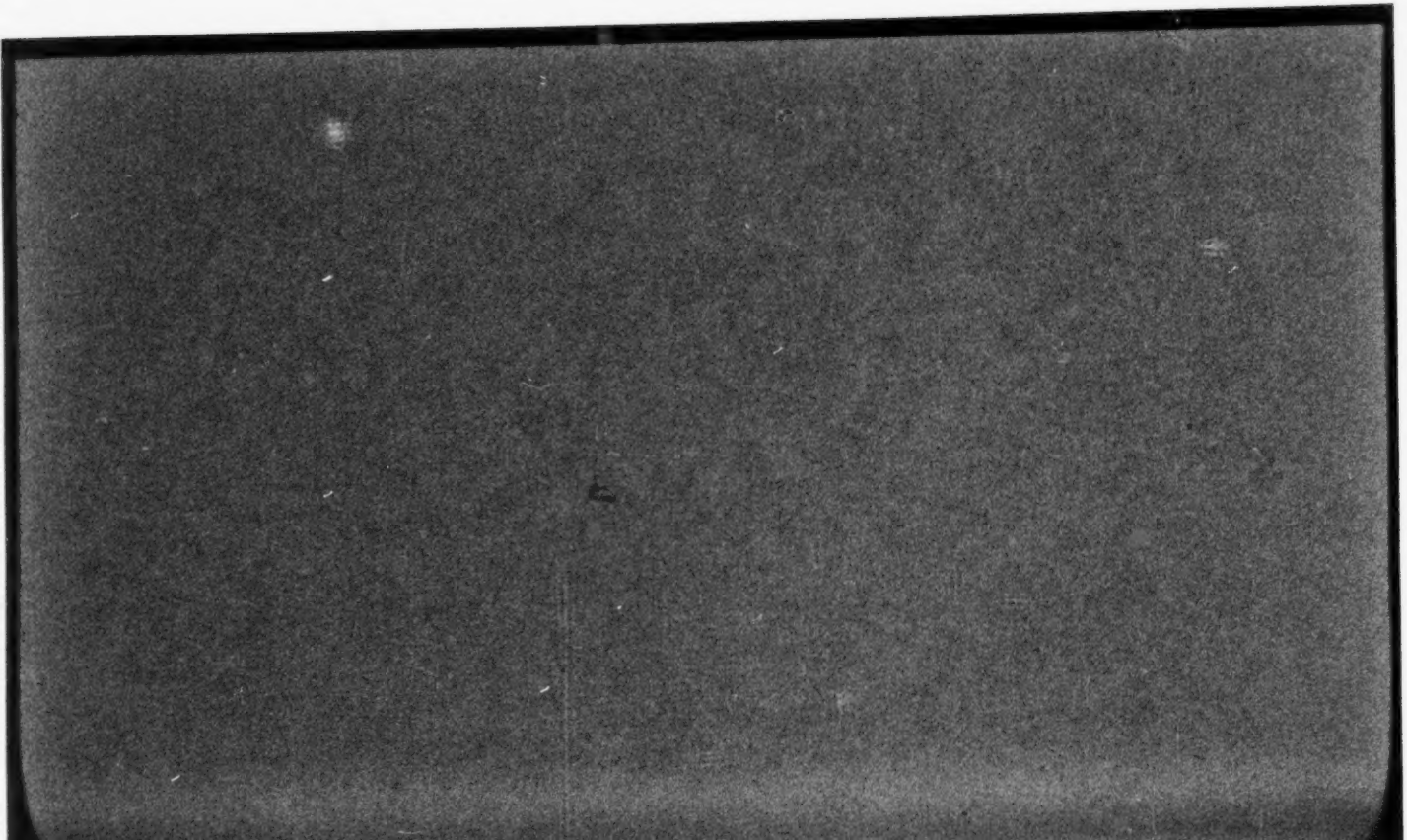
vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI
and
NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Ninth Circuit.

G. W. HOFF,
JOSEPH P. FALLON,
GEORGE A. McGOWAN,
Hearst Building, San Francisco,
Attorneys for Petitioner.



In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

CHUNG FOOK,
Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

That Lee Shee is a Chinese woman who made application to be admitted to the United States

on the 3d day of May, 1922, at the port of San Francisco as the wife of a native born Chinese citizen of the United States, to-wit, Chung Fook, petitioner herein. The citizenship of Chung Fook is conceded. Lee Shee was refused and denied a landing by a board of special inquiry upon the ground that she was an alien afflicted with a dangerous contagious disease known as clonorchiasis, said finding being based upon the certificate of the medical examiner of aliens, and from said decision no appeal is permitted to be taken to the Secretary of Labor.

SPECIFICATION OF ERRORS.

1. That it is cruel, inhuman, unjust, contrary to and against the reason and spirit of the law and contrary to American institutions to deport the detained away from and out of the United States and refuse her admission thereto when her husband, a native born citizen of the United States is a lawful resident and domiciled within the United States, and that it is cruel, unjust, against the reason and spirit of the law to separate the said detained from her husband and deprive the said husband of his wife.

2. That the action of the immigration officials is contrary to and in violation of Section 22 of the Immigration Act of February 5, 1917.

ARGUMENT.

The petition concedes the alienage of Lee Shee and does not place in issue the nature or character

of the contagious disease known as clonorchiasis, although it may be stated that clonorchiasis is not a quarantinable disease. Section 1994 of the Revised Statutes (U. S. Comp. Statute 1901, p. 1268) provides:

> "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Lee Shee, being incapable of naturalization, remained an alien notwithstanding her marriage. (Fong Yue Ting v. U. S., 149 U. S. 698, 716; 37 L. Ed. 905, 914; 13 Sup. Ct. Rep. 1016; Low Wah Suey v. Backus, 225 U. S. 460; 32 Sup. Ct. Rep. 734, 738.) It is contended that there is an absolute exemption accorded the alien wife of a citizen of the United States circumstanced as is Lee Shee, contained in Section 22 of the General Immigration Act of Feb. 5, 1917. The entire section is given herewith, the portion in italics being that upon which the claim of exemption is based:

> "Diseased wife or minor child of naturalized alien or permanent resident—whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, the said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor child shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted

or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital, until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided, That if the person* sending for wife or minor children is naturalized, a wife to whom *married or minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital,* and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act."

This Section 22 of the Immigration Act applies to the wives and children of domiciled aliens and of naturalized citizens. Insofar as it applies to domiciled aliens it is not involved in this proceeding. Under the heading of "Citizenship" it is to be noted that the section is again divided. It gives an absolute right of admission to the wife and child of a naturalized citizen where the naturalization preceded the marriage to the wife or birth of the child, and a somewhat modified or qualified right where the marriage or birth of the child took place prior to the naturalization. In the present case we are concerned solely with the first subdivision, namely, that the husband was a citizen

of the United States at the time the marriage took place.

It may be noted that this section by its words is limited to a "naturalized" citizen. Chung Fook, the husband, is not a naturalized citizen, but is a native-born citizen of the United States. We contend that under a proper construction of this statute the wife of a native-born citizen is at least entitled to the same rights, privileges, immunities and exemptions as is the wife of a naturalized citizen. It would be unthinkable to accord to a naturalized citizen any greater right or privilege than would be accorded to a native born citizen; in fact, quite a similar situation some years ago engrossed the attention of the Circuit Court of Appeals for the Ninth Circuit, wherein was contrasted the rights of a merchant's wife and the rights of a citizen's wife. The case referred to is that of Tsoi Sim v. U. S. (116 Fed. 920), where on page 925 the Court held as follows:

> "It being the law that the wife and children of a Chinese merchant are permitted to remain in this country because the domicile of the wife and children is that of the husband and father, as was expressly held in re Chung Toy Ho, and approved by the Supreme Court in U. S. v. Gue Lim, supra, upon what method of legal reasoning can it be held that the wife of an American citizen is not entitled to the same 'rights, privileges, and immunities' under the law? The Chinese merchant does not stand upon a higher plane than the Chinaman who is born of parents, of Chinese descent, having a permanent domicile and residence in the United States. On the contrary, the native born, by virtue of his birth, becomes a citizen

of the United States, and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of the marriage relations. These are hers, as well as his, natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country."

So we contend in the present case that the statute in using the word "naturalized" citizen simply expressed the minimum, if there can be any such, between the rights of naturalized citizens and native born citizens. We contend that the native born citizen of the United States must, of necessity, be entitled to the same rights and privileges which are accorded in this Section 22 to the naturalized citizen; to hold otherwise would be to give the naturalized citizen a right and preference above and beyond that which is enjoyed by the native born citizen. Such a conclusion leads to an absurd result and finds no legal sanction.

It seems that the proper construction of the statute is to adopt the rule laid down by the Supreme Court of the United States in a number of decisions construing the Chinese Exclusion Acts wherein matters are deemed to have been incorporated within the Acts by legislative intent even though not specifically set forth therein in words. One of the last cases of this kind was that of U. S. v. Mrs. Gue Lim et al. (176 U. S. 459, 464; 20 Sup. Ct. 415, 418-19; 44 L. Ed. 544.) This case

was that of the wife and minor children of a merchant who sought admission to the United States without the certificate required by Section 6 of the Act of July 5, 1884. This Section 6 required the production by the certificate therein mentioned of every Chinese member of the exempt classes permitted to come to the United States, the exempt classes designated being merchants, teachers, students, travelers for curiosity and pleasure, and government officials, wherein no mention is made of the wives or minor children of any of these classes. The Supreme Court held that it was not the intention of the Treaty with China, nor the Chinese Exclusion Acts, to keep out the women or the children, and hence they should be admitted upon the standing of their husbands and fathers and that it was unnecessary for them to secure the certificate in question.

An earlier case was that of Lau Ow Bew v. U. S., 144 U. S. 47, 59; 36 L. Ed. 340, 344; 12 Sup. Ct. Rep. 517-520, wherein it was decided by the Supreme Court that notwithstanding the fact that Section 6 of the Act of May 6, 1882, as amended and added to by the Act of July 5, 1884, required that every Chinese person who was a member of the exempt classes should produce the certificate mentioned in Section 6 of said Act. The Court held:

> "Nothing is better settled than that statutes should receive a sensible construction such as will effectuate the legislative intents, and, if possible, so as to avoid an unjust or an absurd conclusion",

and in so concluding the Court held that the Act had no application to Chinese merchants previously

domiciled in this country who had left upon a temporary visit to China and thereafter sought readmission into the United States to resume their previously acquired commercial domicile. Commenting upon this case the Supreme Court in U. S. v. Gue Lim, supra, recites as follows:

> "It was also held in that case that although the literal wording of the statute of 1884, Section 6, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes, animo revertendi, yet its true and proper construction did not include his case, and the general terms used in the act were limited to those persons to whom Congress manifestly intended to apply them, which would be those who were about to come to the United States for the first time, and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning."

Based upon the authorities hereinbefore cited, we are firmly of the opinion that it was not the intention of Congress to grant to the wife of a naturalized citizen a right or privilege which was to be withheld from the native born citizen, but, on the contrary, that it was the Congressional intention that the statute should be construed to give to the wife of a native born citizen the same right and privilege which is accorded the wife of a naturalized citizen.

In support of this contention we quote the following from Senate Report No. 352, 64th Congress,

1st Session, relative to Section 22, Act of February 5, 1917:

> "By these amendments it is believed reasonable and eminently humane provision is made on the one hand for preventing the introduction into the country of loathsome and dangerous contagious diseases by ALIENS claiming to be wives and children, and, on the other hand, for showing the special consideration in the way of treatment in hospitals at United States ports due such wives and children because of the status of their husbands and fathers. It is believed that the line of demarcation between those who shall be 'landed without treatment' and those who shall be admitted to immigrant hospitals is logically and fairly fixed."

In the instant case the Court below states its opinion of the law as follows:

> "We think that the exemption from detention expressed in the proviso was intended to relate only to the wife who by marriage has acquired her husband's citizenship and thus has become a citizen of the United States, and that it does not apply to a wife who notwithstanding her marriage to a citizen still remains an alien as provided by Section 1994 Rev. Stats. Section 22 of the Act of February 5, 1917, prescribes a different treatment for each of these classes. The wife who remains an alien because she was married before her husband's naturalization is to be detained and given treatment in hospital, but the wife married subsequently to her husband's naturalization, if she herself was entitled to naturalization, is to be admitted without detention for treatment in hospital, and this obviously for the reason that by her marriage she has become a citizen of the United States and entitled to admission regardless of her physical condition."

We feel that this opinion is reading something into the law that cannot be found therein, for nowhere is there any provision of law relative to admission to the United States, that makes a distinction between the wife of a citizen, who is an alien, and one who may be naturalized. If such distinction was intended the statute would have so expressed it.

Wherefore, because of the gravity and importance of the question involved, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them, and each of them, to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the records and proceedings of the said Circuit Court of Appeals in the said case lately pending therein, entitled "Chung Fook, Appellant, v. Edward White, as Commissioner of Immigration for the Port of San Francisco, Appellee, No. 3922", to the end that the decision and judgment of said Circuit Court of Appeals may be reviewed, as provided in Section 240 of the Act of Congress approved March 3, 1911, and that your petitioner may have such other and further relief or remedy in the premises, as to this Court may seem appropriate and in conformity with said Act, and that the decision and the judgment of the said Circuit Court of Appeals in the said case, and every part thereof may be reversed by this Honorable Court.

And your petitioner now presents, as an exhibit to his petition, a certified copy of the entire transcript of record of the case, including the proceedings in the United States Circuit Court of Appeals for the Ninth Circuit, to which Court he prays the writ of certiorari may be directed.

And your petitioner will ever pray.

Dated, April 4, 1923.

G. W. HOTT,
JOSEPH P. FALLON,
GEORGE A. MCGOWAN,
Attorneys for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioner and that in my opinion the foregoing and annexed petition for a writ of certiorari is well founded as to matters of fact and as to questions of law, and is not interposed for delay.

Dated, April 4, 1923.

G. W. HOTT,
Of Counsel for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

CHUNG FOOK,
Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI.

To Harry M. Daugherty, Attorney General of the United States, and Assistant Attorney General of the United States, Washington, D. C.

Sirs:

You, and each of you, will please take notice that the petitioner above named, through his counsel,

will present to the above named Court, on the..... day of....., 1923, at the hour of twelve o'clock noon of said day, or as soon thereafter as his counsel can be heard, at the courtroom thereof, in the Capitol Building, in the City of Washington, District of Columbia, a petition for a writ of certiorari.

Said petition will be based upon this notice, the accompanying petition for a writ of certiorari and all of the papers and records on file.

Dated, April 4, 1923.

Yours, etc.,

G. W. HOTT,

JOSEPH P. FALLON,

GEORGE A. McGOWAN,

Attorneys for Petitioner.

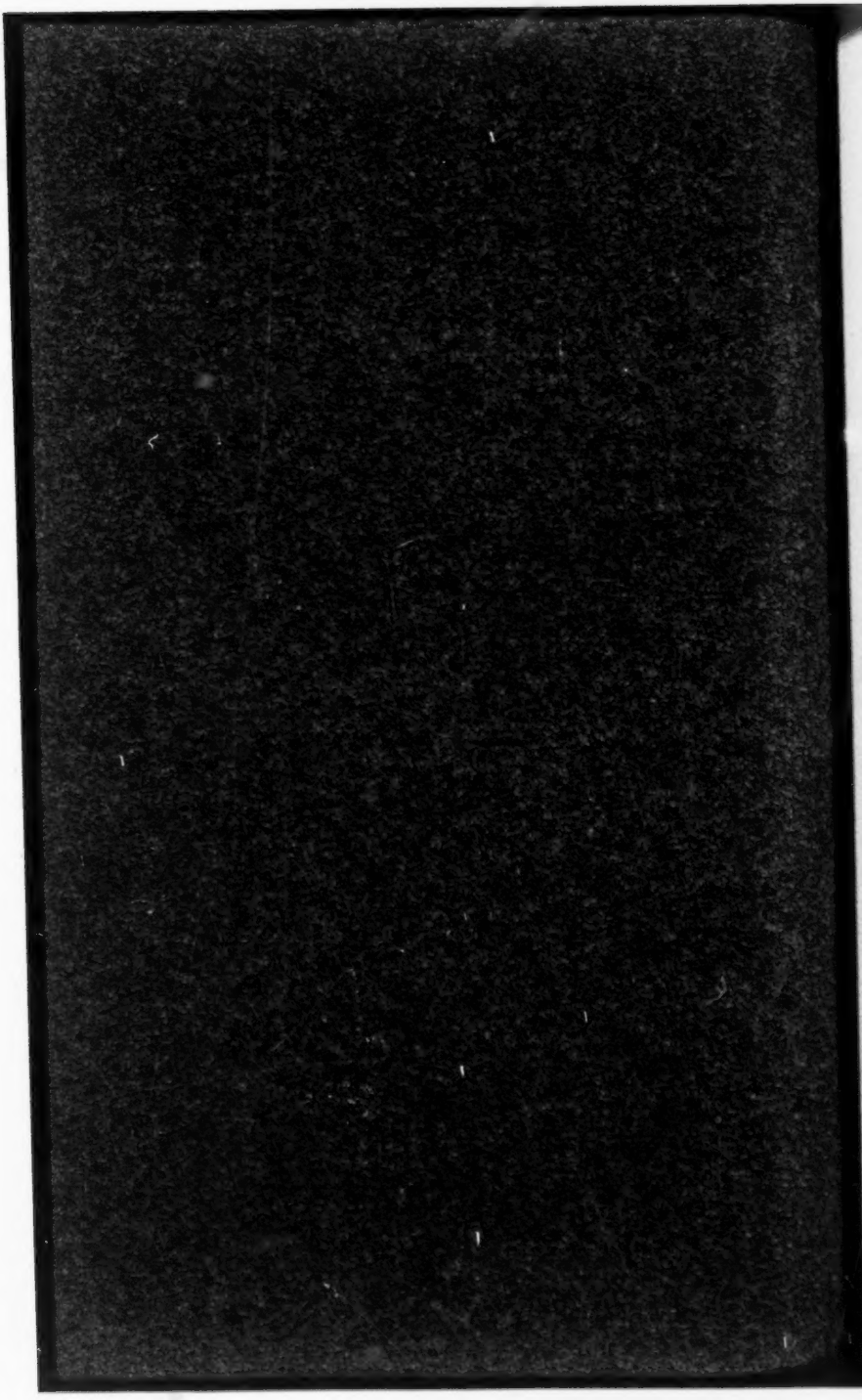
ADMISSION OF SERVICE.

Receipt of a copy of the foregoing petition for writ of certiorari and notice of presentation of petition for writ of certiorari is hereby admitted this.....day of April, 1923.

HARRY M. DAUGHERTY,
Attorney General of the United States.

.....
Assistant Attorney General of the United States,

Attorneys for Respondent.



In the Supreme Court of the United States.

OCTOBER TERM, 1922.

CHUNG FOOK, PETITIONER, *v.* EDWARD WHITE, AS COMMISSIONER OF Immigration, Port of San Francisco, respondent.	No. 1008.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

The writ of certiorari is sought to review a judgment of the Circuit Court of Appeals affirming the judgment of the District Court denying a writ of habeas corpus by which the petitioner sought to free his wife, Lee Shee, from the custody of the Commissioner of Immigration for the Port of San Francisco.

Lee Shee, a Chinese woman, sought to be admitted to the United States at the Port of San Francisco. She was at the time the wife of the petitioner, who is a native-born citizen of the United States. Lee Shee was refused a landing by a board of special inquiry upon the ground that she was an alien afflicted with a dangerous contagious disease.

Section 3 of the General Immigration Act of February 5, 1917 (39 Stat. 875), excludes aliens afflicted with a dangerous contagious disease. The petitioner admits that Lee Shee, being incapable of naturalization, did not become a citizen of the United States by virtue of her marriage. The contention made is that, notwithstanding the alienage of Lee Shee, she was given the right of admission by the first proviso of Section 22 of the Act of February 5, 1917 (39 Stat. 891).

Section 22 provides:

> Whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor child shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; * * * *Provided*, That if the person sending for wife or minor children is naturalized, a wife to whom married or minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital * * *.

Lee Shee, not being the wife of a naturalized citizen or of an alien permanently residing in this country, is not one of those to whom Section 22 expressly

applies. The petitioner contends, however, that although the wives of native-born citizens are not named in the section they are by implication given all the rights which the section gives to the wives of naturalized aliens.

The fallacy of the petitioner's contention grows out of the fact that Section 22 does not enlarge the right possessed by the wives of naturalized citizens to enter the country, but it operates to limit their rights in this respect.

In *Kelly* v. *Owen* (7 Wall. 496) this court held that under Section 1994, R. S., any woman racially capable of naturalization who married a citizen of the United States thereby became herself a citizen of the United States. It was also held that such a woman became a citizen of the United States whether marriage preceded or followed her husband's naturalization.

Prior to the Act of February 5, 1917, the wives of naturalized citizens were United States citizens (unless the wife was an alien racially incapable of naturalization) and entitled to enter the country freely. Section 22 of the Act of February 5, 1917, cut down the rights of such women and provided for detention and examination if the wife was afflicted with a dangerous contagious disease and if the naturalization of the husband had followed marriage.

The proviso which the petitioner relies on is a saving clause preserving existing rights in connection with provisions which cut down the right of the

wife of a naturalized citizen to enter this country. Since the proviso merely saves existing rights it cannot be made the basis for the creation of any new right of entry not previously possessed.

Since a Chinese woman does not acquire citizenship by marrying a citizen of the United States, she can not enter the country freely apart from Section 22, and Section 22 does not give her this right. The section is just as inapplicable to the Chinese wife of a naturalized citizen as it is to the Chinese wife of a native-born citizen.

The court below adopted this view of the law, saying:

> We think that the exemption from detention expressed in the proviso was intended to relate only to the wife who by marriage has acquired her husband's citizenship and thus has become a citizen of the United States, and that it does not apply to a wife who notwithstanding her marriage to a citizen still remains an alien as provided by Section 1994, Rev. Stats.

In *Ex parte Leong Shee* (275 Fed. 364), the facts were the same as those here presented and the District Court took the same view of Section 22. The court said:

> The claim of the petitioner is based on the proviso to Section 22, *supra*. * * * But I am far from satisfied that the alien wife of a naturalized citizen is entitled to admission under the proviso in question, even though the marriage took place subsequent to the naturali-

> zation. On the contrary, I am inclined to the opinion that Section 22 is a limitation upon the right of citizens of the United States to admission, and that the section and the accompanying proviso apply only to the wives of naturalized citizens who became naturalized through the naturalization of their husbands.

In Section 22 Congress restricted the right of entry of a wife of a naturalized citizen when the marriage preceded naturalization, but not if it followed naturalization. This distinction was probably made in order to put the wives and minor children of naturalized citizens upon the same footing with respect to entry into the country. Under Section 1993, R. S., a child born outside the United States subsequent to the naturalization of the parent is a United States citizen and may freely enter the country. Under Section 5 of the Act of March 2, 1907 (34 Stat. 1228), a minor child born outside the United States prior to the naturalization of the parent becomes a United States citizen only after beginning to reside permanently in the United States. Prior to such residence he has no free right of entry.

Neither *Lau Ow Bew* v. *United States* (144 U. S. 47), nor *United States* v. *Gue Lim* (176 U. S. 459), decides any principle favorable to the petitioner. The court in these cases was construing an Act of Congress passed to carry out the provisions of a treaty with China. The court held that the Act should, if possible, be construed so as to accord with, rather than conflict with, the Chinese treaty.

It is difficult to see any ground for the slightest doubt in this case. The respondent insists that there is no such doubt as will justify a review by this court of the unanimous decision of the Circuit Court of Appeals.

The petition should be denied.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

ALBERT OTTINGER,
Assistant Attorney General.

CHARLES H. WESTON,
Special Assistant to the Attorney General.

MAY, 1923.

FILED
JAN 21 1924
WM. R. STANSBURY
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No. 299

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

CHUNG FOOK,
Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLANT.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLANT.

Statement of the Case.

Lee Shee is a Chinese woman who made application to be admitted to the United States on the 3d day of May, 1922, at the port of San Francisco as the wife of a native born Chinese citizen of the United States, to-wit, Chung Fook, petitioner herein. The citizenship of Chung Fook is conceded. Lee Shee was refused and denied a landing by a

Board of Special Inquiry upon the ground that she was an alien afflicted with a dangerous contageous disease known as clonorchiasis, said finding being based upon the certificate of the medical examiner of aliens, and from said decision no appeal is permitted to be taken to the Secretary of Labor.

Specification of Errors.

1. That it is cruel, inhuman, unjust, contrary to and against the reason and spirit of the law and contrary to American institutions to deport the detained away from and out of the United States and refuse her admission thereto when her husband, a native-born citizen of the United States is a lawful resident and domiciled within the United States, and that it is cruel, unjust, against the reason and spirit of the law to separate the said detained from her husband and deprive the said husband of his wife.

2. That the action of the Immigration officials is contrary to and in violation of Section 22 of the Immigration Act of February 5, 1917.

Argument.

The petition concedes the alienage of Lee Shee and does not place in issue the nature or character of the contagious disease known as clonorchiasis, although it may be stated that clonorchiasis is not

a quarantinable disease. Section 1994 of the Revised Statutes (U. S. Comp. Statute 1901, p. 1268) provides:

> "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Lee Shee, being incapable of naturalization, remained an alien notwithstanding her marriage. (*Fong Yue Ting v. U. S.*, 149 U. S. 698, 716; 37 L. Ed. 905, 914; 13 Sup. Ct. Rep. 1016; *Low Wah Suey v. Backus*, 225 U. S. 460; 32 Sup. Ct. Rep. 734, 738.) It is contended that there is an absolute exemption accorded the alien wife of a citizen of the United States circumstanced as is Lee Shee, contained in Section 22 of the General Immigration Act of Feb. 5, 1917. The entire section is given herewith, the portion in italics being that upon which the claim of exemption is based:

> "Diseased wife or minor child of naturalized alien or permanent resident—whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, the said wife, or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor child shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be de-

termined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital, until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital*, and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act."

This Section 22 of the Immigration Act applies to the wives and children of domiciled aliens and of naturalized citizens. In so far as it applies to domiciled aliens it is not involved in this proceeding. Under the heading of "Citizenship" it is to be noted that the section is again divided. It gives an absolute right of admission to the wife and child of a naturalized citizen where the naturalization preceded the marriage to the wife or birth of the child, and a somewhat modified or qualified right where the marriage or birth of the child took place prior to the naturalization. In the present case we are concerned solely with the first subdivision, namely,

that the husband was a citizen of the United States at the time the marriage took place.

It may be noted that this section by its words is limited to a "naturalized" citizen. Chung Fook, the husband, is not a naturalized citizen, but is a native-born citizen of the United States. We contend that under a proper construction of this statute the wife of a native-born citizen is at least entitled to the same rights, privileges, immunities and exemptions as is the wife of a naturalized citizen. It would be unthinkable to accord to a naturalized citizen any greater right or privilege than would be accorded to a native-born citizen; in fact, quite a similar situation some years ago engrossed the attention of the Circuit Court of Appeals for the Ninth Circuit, wherein was contrasted the rights of a merchant's wife and the rights of a citizen's wife. The case referred to is that of *Tsoi Sim v. U. S.* (116 Fed. 920), where on page 925 the Court held as follows:

> "It being the law that the wife and children of a Chinese merchant are permitted to remain in this country because the domicile of the wife and children is that of the husband and father, as was expressly held in re Chung Toy Ho, and approved by the Supreme Court in U. S. v. Gue Lim, supra, upon what method of legal reasoning can it be held that the wife of an American citizen is not entitled to the same "rights, privileges, and immunities" under the law? The Chinese merchant does not stand upon a higher plane than the Chinaman who is born of parents, of Chinese descent, having a permanent domicile and residence in the United

States. On the contrary, the native born, by virtue of his birth, becomes a citizen of the United States and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of the marriage relations. These are hers, as well as his, natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country."

So we contend in the present case that the statute in using the word "naturalized" citizen simply expressed the minimum, if there can be any such, between the rights of naturalized citizens and native-born citizens. We contend that the native-born citizen of the United States must, of necessity, be entitled to the same rights and privileges which are accorded in this Section 22 to the naturalized citizen; to hold otherwise would be to give the naturalized citizen a right and preference above and beyond that which is enjoyed by the native-born citizen. Such a conclusion leads to an absurd result and finds no legal sanction.

It seems that the proper construction of the statute is to adopt the rule laid down by the Supreme Court of the United States in a number of decisions construing the Chinese Exclusion Acts wherein matters are deemed to have been incorporated within the Acts by legislative intent even though not specifically set forth therein in words.

One of the last cases of this kind was that of *U. S. v. Mrs. Gue Lim et al.* (176 U. S. 459, 464; 20 Sup. Ct. 415, 418-19; 44 L. Ed. 544). This case was that of the wife and minor children of a merchant who sought admission to the United States without the certificate required by Section 6 of the Act of July 5, 1884. This Section 6 required the production by the certificate therein mentioned of every Chinese member of the exempt classes permitted to come to the United States, the exempt classes designated being merchants, teachers, students, travelers for curiosity and pleasure, and government officials, wherein no mention is made of the wives or minor children of any of these classes. The Supreme Court held that it was not the intention of the Treaty with China, nor the Chinese Exclusion Acts, to keep out the women or the children, and hence they should be admitted upon the standing of their husbands and fathers and that it was unnecessary for them to secure the certificate in question.

An earlier case was that of *Lau Ow Bew v. U. S.*, 144 U. S. 47, 59; 36 L. Ed. 340, 344; 12 Sup. Ct. Rep. 517-520, wherein it was decided by the Supreme Court that notwithstanding the fact that Section 6 of the Act of May 6, 1882, as amended and added to by the Act of July 5, 1884, required that every Chinese person who was a member of the exempt classes should produce the certificate mentioned in Section 6 of said Act. The Court held,

> "Nothing is better settled than that statutes should receive a sensible construction such as

> will effectuate the legislative intents, and, if possible, so as to avoid an unjust or an absurd conclusion,"

and in so concluding the Court held that the act had no application to Chinese merchants previously domiciled in this country who had left upon a temporary visit to China and thereafter sought readmission into the United States to resume their previously acquired commercial domicile. Commenting upon this case the Supreme Court in *U. S. v. Gue Lim*, supra, recites as follows:

> "It was also held in that case that although the literal wording of the statute of 1884, Section 6, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes, animo revertendi, yet its true and proper construction did not include his case, and the general terms used in the act were limited to those persons to whom Congress manifestly intended to apply them, which would be those who were about to come to the United States for the first time, and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning."

Based upon the authorities hereinbefore cited, we are firmly of the opinion that it was not the intention of Congress to grant to the wife of a naturalized citizen a right or privilege which was to be withheld from the native-born citizen, but, on the contrary, that it was the Congressional intention that the statute should be construed to give to

the wife of a native-born citizen the same right and privilege which is accorded the wife of a naturalized citizen.

In support of this contention we quote the following from Senate Report No. 352, 64th Congress, 1st Session, relative to Section 22, Act of February 5, 1917:

> "By these amendments it is believed reasonable and eminently humane provision is made on the one hand for preventing the introduction into the country of loathsome and dangerous contagious diseases by *aliens* claiming to be wives and children, and, on the other hand, for showing the especial consideration in the way of treatment in hospitals at United States ports due such wives and children because of the status of their husbands and fathers. It is believed that the line of demarkation between those who shall be 'landed without treatment' and those who shall be admitted to immigrant hospitals is logically and fairly fixed."

In the instant case the Court below states its opinion of the law as follows:

> "We think that the exemption from detention expressed in the proviso was intended to relate only to the wife who by marriage has acquired her husband's citizenship and thus has become a citizen of the United States, and that it does not apply to a wife who notwithstanding her marriage to a citizen still remains an alien as provided by Section 1994 Rev. Stats. Section 22 of the act of February 5, 1917, prescribes a different treatment for each of these classes. The wife who remains an alien because she was married before her husband's naturalization is to be detained and

given treatment in hospital, but the wife married subsequently to her husband's naturalization, if she herself was entitled to naturalization, is to be admitted without detention for treatment in hospital, and this obviously for the reason that by her marriage she has become a citizen of the United States and entitled to admission regardless of her physical condition."

We feel that this opinion is reading something into the law that cannot be found therein, for nowhere is there any provision of law that makes a distinction between the wife of a citizen, who is an alien, and one who may be naturalized. If such distinction was intended the statute would have so expressed it.

It is therefore respectfully submitted in the present case that the demurrer should be overruled and the writ directed to issue.

Dated, Washington, D. C.,
January 16, 1924.

Respectfully submitted,
JACKSON H. RALSTON,
G. W. HOTT,
Attorneys for Petitioner.

Office Supreme Court, U. S.
FILED
FEB 25 1924
WM. R. STANSBURY
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No. 299.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

CHUNG FOOK, PETITIONER,

v.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF ON BEHALF OF RESPONDENT.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1924

In the Supreme Court of the United States.

OCTOBER TERM 1923.

CHUNG FOOK, PETITIONER, v. EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION, Port of San Francisco, respondent.	No. 299.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF ON BEHALF OF RESPONDENT.

STATEMENT.

This case comes here on writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit affirming the judgment of the District Court for the Northern District of California, denying admission to one Lee Shee, an alien Chinese woman.

Lee Shee is the wife of Chung Fook, the petitioner herein, who is a native-born citizen of the United States. Lee Shee was refused a landing upon the report of a Board of Special Inquiry that she was an alien afflicted with a dangerous contagious disease. These facts are admitted, as also the fact that Lee Shee, being incapable of naturalization, did not be-

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come a citizen of the United States by virtue of her marriage to a citizen.

The contention is made, however, that, notwithstanding the alienage of Lee Shee, she was given the right of admission by the proviso of Section 22 of the Act of February 5, 1917, 39 Stat. 891.

ARGUMENT.

Section 3 of the Act of February 5, 1917, *supra*, provides in part as follows:

> That the following classes of aliens shall be excluded from admission into the United States: * * * persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; * * *.

Section 1994, R. S., provides—

> Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

The above section confers the right of citizenship only on those who might have been lawfully naturalized, and, in effect, excludes from citizenship those aliens, married to citizens of the United States, who are not subject to naturalization. Therefore, the provisions of Section 3 of the Immigration Act hereinbefore set forth applies to Lee Shee. Upon her application for admission to the United States as the wife of a citizen, Lee Shee was examined by a lawfully constituted board and found to be afflicted with a dangerous contagious disease. She, therefore, became subject to exclusion under the

provisions of Section 3 of the Immigration Act hereinbefore quoted.

However, petitioner claims Lee Shee is entitled to admission to the United States under the provisions of Section 22 of the Immigration Act, which reads as follows:

> That whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be afflicted with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided*, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, and with respect

> to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act.

It is not disputed that Lee Shee, being incapable of naturalization, remained an alien, notwithstanding her marriage to a citizen of the United States, but it is claimed that an absolute exemption from detention for treatment and exclusion from the United States is implied in the proviso of Section 22.

Conceding that Section 22 applies with equal effect to the wife of a native-born citizen and a citizen by naturalization prior to the marriage, yet, where such wife is an alien, incapable of naturalization, and therefore does not become a citizen of the United States by virtue of her marriage, the proviso of Section 22 is inapplicable to her. It is the evident purpose of Section 22 to protect inhabitants of this country from contact with foreigners afflicted with dangerous contagious diseases. Such alien, when married to a citizen of the United States, and found, upon application for admission, to be afflicted with a dangerous contagious disease, need not be immediately deported, but may be held under regulations, promulgated by the Secretary of Labor, for treatment to ascertain whether the disease or disorder is easily curable. If it shall be determined, after proper hospital treatment, that the disease has been cured, or that afflicted persons can be per-

mitted to land without danger to other residents, they may be so admitted.

To admit the alien wife of an American citizen, whether native-born or naturalized, where such alien wife is afflicted with a dangerous contagious disease would defeat the very purpose of Section 22.

Section 22 has application only to the wife of a citizen, naturalized or native-born, who herself could have become naturalized even though she had not married a citizen of the United States. It has no application to an alien belonging to a race not eligible for naturalization. Such person falls strictly within the provisions of Section 3 of the Immigration Act hereinbefore cited.

This distinction is well set forth in the opinion of the Circuit Court of Appeals for the Ninth Circuit, which petitioner now asks be reviewed. In its opinion the court said:

> We think that the exemption from detention expressed in the proviso was intended to relate only to the wife who by marriage has acquired her husband's citizenship and thus has become a citizen of the United States, and that it does not apply to a wife who, notwithstanding her marriage to a citizen, still remains an alien as provided by Section 1994, Rev. Stats. Section 22 of the Act of February 5, 1917, prescribes a different treatment for each of these classes. The wife who remains an alien because she married subsequently to her husband's naturalization, if she herself was entitled to naturalization, is to be admitted without detention

> for treatment in hospital, and this obviously for the reason that by her marriage she has become a citizen of the United States and entitled to admission regardless of her physical condition.

The above interpretation of the meaning of Section 22 is strengthened by reference to Section 18 of the Immigration Act, which provides in part as follows:

> No alien certified, as provided in section sixteen of this act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: * * *.

The above-quoted provision shows the intent of the Immigration Act of 1917 as to the exclusion of aliens afflicted with dangerous contagious diseases. The only exception to the authority of the Secretary of Labor to exclude from landing persons afflicted with contagious diseases, or to detain such persons for hospital treatment, is in the case of a foreign-born person who has married a citizen of the United States and who has thereby become a citizen of the United States. All other foreign-born persons, when afflicted

with a contagious disease, are subject to detention for treatment and, where it is ascertained that the disease is not easily curable, to deportation. The fact that such alien is married to a citizen of the United States, either native-born or naturalized, does not, where such person is racially ineligible for citizenship, change the situation. *Ex parte Leong Shee*, 275 Fed. 364.

Neither *Lau Ow Bew* v. *United States* (144 U. S. 47) nor *United States* v. *Gue Lim* (176 U. S. 459) decides any principle favorable to the petitioner. The court in those cases was construing an Act of Congress passed to carry out the provisions of a treaty with China. The court held that the Act should, if possible, be construed so as to accord, rather than conflict with, the Chinese treaty.

CONCLUSION.

Lee Shee, being an alien and racially ineligible for citizenship, is subject to detention for hospital treatment and if found to be afflicted with an incurable contagious disease is subject to deportation, notwithstanding the fact that she is married to a citizen of the United States.

The judgment of the Circuit Court of Appeals should be affirmed.

JAMES M. BECK,
Solicitor General.
ALBERT OTTINGER,
Assistant Attorney General.
HARVEY B. COX,
Special Assistant to the Attorney General.

FEBRUARY, 1924.

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CHUNG FOOK *v.* WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 299. Argued February 26, 1924.—Decided April 7, 1924.

The proviso of § 22 of the Immigration Act of February 5, 1917, under which the wife of a "naturalized" citizen, married to him after his naturalization and sent for by him, may be admitted without detention for treatment in hospital though found to be affected with a contagious disorder, cannot be extended by judicial construction to include the wife of a native born citizen. P. 445.
287 Fed. 533, affirmed.

CERTIORARI to a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court denying a petition for a writ of *habeas corpus*.

Mr. Jackson H. Ralston, with whom *Mr. G. W. Hott* was on the brief, for petitioner.

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[1] Cases like *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543, and *Western Union Telegraph Co.* v. *Andrews*, 216 U. S. 165, in which questions of the immunity of state officers from suit are considered by this Court on direct appeal under § 238, come here by that method because of the constitutional question involved. Compare *Illinois Central R. R. Co.* v. *Adams*, 180 U. S. 28, 37, 38.

Mr. Assistant Attorney General Ottinger, with whom *Mr. Solicitor General Beck* and *Mr. Harvey B. Cox,* Special Assistant to the Attorney General, were on the brief, for respondent.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Chung Fook is a native-born citizen of the United States. Lee Shee, his wife, is an alien Chinese woman, ineligible for naturalization. In 1922 she sought admission to the United States, but was refused and detained at the immigration station, on the ground that she was an alien, afflicted with a dangerous contagious disease. No question is raised as to her alienage or the effect and character of her disease; but the contention is that, nevertheless, she is entitled to admission under the proviso found in § 22 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 891. The section is copied in the margin.[1]

A petition for a writ of *habeas corpus* was denied by the Federal District Court for the Northern District of California, and upon appeal to the Circuit Court of Appeals, the judgment was affirmed. 287 Fed. 533.

The pertinent words of the proviso are: "That if the person sending for wife or minor children is naturalized,

[1] "Sec. 22. That whenever an alien shall have been naturalized, or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until

a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, . . ." The measure of the exemption is plainly stated and, in terms, extends to the wife of a naturalized citizen only.

But it is argued that it cannot be supposed that Congress intended to accord to a naturalized citizen a right and preference beyond that enjoyed by a native-born citizen. The court below thought that the exemption from detention was meant to relate only to a wife who by marriage had acquired her husband's citizenship, and not to one who, notwithstanding she was married to a citizen, remained an alien under § 1994, Rev. Stats.: "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen." To the same effect, see *Ex parte Leong Shee*, 275 Fed. 364. We are inclined to agree with this view; but, in any event, the statute plainly relates only to the wife or children of a naturalized citizen and we cannot interpolate the words "native-born citizen" without usurping the legislative function. *Corona Coal Co.* v. *United States*, 263 U. S. 537; *United States* v. *First National Bank*, 234 U. S. 245, 259–260; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S.

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cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided*, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act."

281, 295; *Amy* v. *Watertown*, 130 U. S. 320, 327. The words of the statute being clear, if it unjustly discriminates against the native-born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional.

Affirmed.